IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO (HMA) No.14 of 2002.

Judgement reserved on: 1.6.2007

Date of decision: 19.7.2007.

Smt. Kiran Bala **…….Appellant**

Vs.

Gurdip Singh **…. Respondent.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No.

For the Appellant : Mr. Subash Sharma, Advocate.

For the Respondent : Mr. Ajay Sharma, Advocate.

Kuldip Singh, Judge.

The wife is in appeal against judgment, decree dated 28.11.2001 passed by learned District Judge, Una in H.M.A. No.59/1999, dismissing the petition of the petitioner-wife. The parties are referred in the same manner as in the impugned judgment, decree.

2. The brief facts of the case are that marriage between the parties was solemnized on 9.5.1997 at village Kuthera Jaswalan, Tehsil Amb, District Una and they lived together in the house of respondent at village Ghanari and consummated the marriage. The husband, his sister-in-law,brother, who were living jointly, immediately after the marriage started maltreating the wife. The husband used to give beatings to the wife,who tolerated the torture of husband with the

---

Whether the reporters of the local papers may be allowed to see the Judgment? Yes

hope that husband would improve, but instead of improving he ultimately, turned out the wife from the matrimonial home in October, 1998 and thereafter the wife started living with her parents at Kuthera Jaswalan. The husband on 9.5.1998 came to the school of wife where she was working as teacher and slapped her in presence of the children. This was brought to the notice of Head Teacher, Govt. Primary School, Kuthera Jaswalan. On 27.10.1999 at about 3.30 p.m. wife had gone to Gagret Bazar and when she was present in the shop of Krishan Kumar, Karyana merchant, the husband came there along with his brother Gurdev Singh and sister-in-law Kamlesh. The husband dragged the wife out of the shop and gave her beatings. The husband has treated the wife with cruelty. On these grounds, the wife filed petition for dissolution of marriage by decree of divorce.

3. The husband contested the petition and denied the allegations made by the wife in the petition. He has submitted that wife does not want to live with him in the joint family. She had been insisting the husband to construct a separate house, which was constructed, but despite that she refused to join the matrimonial company of husband and live at Village Ghanari. The husband visited the house of her parents to bring her back , but wife and her parents declined to send the wife along with the husband. The husband has denied that he ever slapped her. He, however, admitted that he went to her school to settle the matter but wife refused to reconcile the matter. He has alleged that the wife had been making false complaints against him to the police. He had alleged that on 12.12.1999 when he was going to his village, he was

forced to get down from the bus at village Kuthera Jaswalan by the wife, her brother and parents and all of them gave merciless beatings to him which resulted into FIR No.118/99 at Police Station, Gagret at the instance of husband.

4. The learned District Judge dismissed the petition and therefore, the wife has come in appeal.

5. I have heard the learned counsel for the parties and have also gone through the record.

6. The learned counsel for the wife has submitted that the learned District Judge has not properly appreciated the material on record . The husband has treated the wife with cruelty. The parties are living separately since long. There is no scope for reconciliation, therefore, the wife is entitled to decree of divorce. The learned counsel for the husband has submitted that wife has levelled false allegations against him. There is variance between the pleaded case of the wife and the evidence led by her. The wife is not entitled to take benefit of her own wrongs. The court below has rightly appreciated the oral and documentary evidence on record and therefore, learned counsel for the respondent-husband has supported the impugned judgment, decree.

7. PW-1 Surjit Singh MHC, P.S. Gagret has proved Rapat No.10 dated 28.10.1999 Ex.P-1 which was lodged at the instance of Smt. Kiran Bala at Police Station, Gagret. In cross-examination he has stated that FIR No.118/99, a copy Ex.R-1 under Sections 147, 149, 506, 323, 324 IPC was got registered by Gurdip Singh.

8. PW-2 Kashmir Singh, Head Teacher, Kuthera Jaswalan has deposed that on 9.6.1998, husband of Kiran Bala came to the school and he directly entered the room of Kiran Bala. After 15-20 minutes Kiran Bala came out weeping. She told that respondent had slapped her. She reported the matter to him vide application Ex.P-2 which bears his signatures Ex.P-3 . In cross-examination he has denied that nothing happened in his school as alleged by him.

9. PW-3 Hari Kishan is the shopkeeper in Gagret Bazar. He has stated that on 27.10.1999 at about 3.30 p.m. petitioner visited his shop for purchasing some material. In the meantime respondent came there and slapped her. In cross-examination he has stated that petitioner and her parents are his customers. He has stated that he did not know respondent earlier.

10. PW-4 Smt. Kiran Bala has stated that the respondent has two elder brothers. The eldest of them is living separately, her husband and elder brother Gurdip are living jointly. She has stated that her husband has illicit relations with her sister-in-law and when she objected to this relationship then her husband gave her beatings. In October, 1998, he left her in her parents house. On 9.6.1998 the respondent gave her beatings in presence of teachers. On 27.10.1999 when she was purchasing articles in Gagret Bazar he entered the shop and gave her beatings. She reported the matter to the police. In cross-examination she has stated that under no circumstance she can live with the respondent.

11. RW-1 Gurdip Singh has supported his case generally. He has stated that they lived as husband and wife for 7-8 days.

Thereafter he left for Bilaspur on his duty. He came after two months and found that the petitioner was not in the matrimonial home. He came to know that his wife had gone to her parents house with her bag and baggage. He went to village Kuthera but wife refused to accompany him, thereafter he again went to village Kuthera Jaswalan along with Randhir Pardhan and Shanti Devi to bring her back. The petitioner insisted for construction of a separate house for her, which he in fact constructed. He again approached her along with Randhir Singh etc. but then the petitioner insisted that the said house be transferred in her name. He went to her school to make her understand but she refused to join the respondent. He never gave beatings to her in the school. One day he was going to Una but he was forced to get down at Kuthera Jaswalan by petitioner, her parents and brother and all of them gave him beatings and he reported the matter to police.

12. RW-2 Uttam Chand has stated that in the year 1998 he was a Centre Head Teacher. Kuthera Jaswalan school was under him in June 1998. He went to Kuthera school and at that time Kiran Bala and her husband were there. The Head Master on that day told him that there was a dispute between Kiran Bala and her husband but Head Master told nothing that husband had given beatings to Kiran Bala on that date.

13. RW-3 Smt. Shanti Devi has stated that she was Ward Panch of village Ghanari in the year 1997. She knew the parties. The mother-in-law of the petitioner after 10-12 days of the marriage came to her and told that the petitioner had gone with her bag and

baggage. The petitioner agreed to keep the trunk, folding chairs wrapped in quilt with her. After some days, petitioner, her father and brother came and said that they wanted to take the articles to the house of Gurdip. She handed over the articles which were given by the petitioner to her. But they did not take those articles to Gurdip's house, rather they took those articles to their own house. She accompanied Gurdip, Pardhan and Ward Panch Harbansh Singh to bring Kiran Bala back from her parents house. The petitioner insisted for construction of a separate house for her, which was constructed. They again went to bring her back but she refused.

14. The perusal of the oral and documentary evidence would show that the petition has been filed by wife on the ground of cruelty by pleadings two instances, firstly that on 9.6.1998, she was slapped by her husband in presence of children in the school and secondly that on 27.10.1999, the respondent dragged her from the shop of Kishan Kumar and gave her beatings with fist blows. In the petition there is no allegations that respondent ill-treats the wife because of his illicit relations with his sister-in-law. The petitioner has miserably failed to prove the alleged incidents of 9.6.1998 and 27.10.1999. The pleaded case of the petitioner is that on 9.6.1998, respondent slapped her in presence of school children but PW-2 Kashmir Singh has stated that on 9.6.1998 respondent came to the school and directly entered the room of the petitioner. The petitioner came out weeping after 15-20 minutes and told him that respondent slapped her. This is not the pleaded case of the petitioner. PW-2 has not stated that respondent slapped the petitioner in presence of the

children. PW-4 Kiran Bala has stated that on 9.6.1998 respondent slapped her in presence of teachers. There are apparent contradictions in the case of the petitioner for the alleged incident dated 9.6.1998. So far 27.10.1999 incident is concerned, the petitioner has pleaded that respondent dragged her from the shop of Hari Kishan and gave her beatings with "Mukka and Hurra". PW-3 Hari Kishan has stated that on 27.10.1999, respondent entered in his shop and slapped the petitioner inside his shop. The petitioner in her own statement has stated that on 27.10.1999, respondent all of sudden came in the shop and gave her beatings with slap and fist blows. PW-3 as well as petitioner have nowhere stated that the respondent caught hold the petitioner with her hair and dragged her out side the shop. The petitioner has failed to prove her case.

15. It has come in the evidence of respondent and RW-4 Smt. Suman Chambial that respondent had tried to bring petitioner back to her matrimonial home but she refused to join the company of the respondent. The learned District judge has appreciated the material on record in right perspective. The learned counsel for the appellant has failed to make out any case for interference.

16. The result of above discussion, the appeal is dismissed. No order as to costs.

(Kuldip Singh)
Judge.

July 19, 2007
(sks)